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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/867,974

05/30/2001

Robert M. Gallagher

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7590

04/22/2004

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EXAMINER

LUK, EMMANUEL S

ART UNIT

PAPER NUMBER

1722

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/867,974

**Applicant(s)**

GALLAGHER, ROBERT M.

**Examiner**

Emmanuel S. Luk

**Art Unit**

1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 43-67 is/are pending in the application.
- 4a) Of the above claim(s) 68-71 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 43, 46, 49-54, 56, 58-60 and 63-67 is/are rejected.
- 7) ☒ Claim(s) 44, 45, 47, 48, 55, 57, 61 and 62 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Newly submitted claims 68-71 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The newly submitted claims are method claims that can use a materially different apparatus such as a casting machine and utilizing other devices other than a robot for placing the inserts.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 68-71 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 43, 46, 49-51, 53, 54, 56, 58-60 and 63-67 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable

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over claims 1, 4, 9, 11, 14 and 25-29, of U.S. Patent No. US 6,264,432 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because the forming device of the pending application is the same as the molding station having a pair of vertically acting mold sections.

In regards to claims the insert material, this is a product limitation and does not further structurally limit the apparatus.

In regards to the shape of the molding device, it would have been of been obvious to one of ordinary skill in the art at the time of the invention to modify US 6,264,432 with a concave or convex shaped mold sections because it is merely a change in shape of the mold surface and allows for creation of the product as desired by the user.

4. Claim 52 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 43, 46, 49-51, 53, 54, 56, 58-60 and 63-67 of U.S. Patent No. US 6,262,462 B1 in view of Morizot et al.

In claim 14 of the US patent, the claim already teaches the use of clamp supports the carrier. The US patent fails to teach the use of vacuum to hold the carrier.

Morizot teaches the use of vacuum to aid in maintaining a layer of mold in place.

It would have been obvious at the time of the apparatus was made to modify US patent 6,262,462 B1 with a vacuum to aid in supporting the carriage, it is viable alternative to the clamping supports. The use of clamps have also been claimed in the pending application in claim 53.

***Allowable Subject Matter***

5. Claims 44, 45, 47, 48, 55, 57, 61, and 62 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
  
6. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to teach a first for placing an insert on the first layer of plasticized polymer in combination with the already patented invention of a polymer transfer and deposition system comprising: a polymer plasticating machine, a discharge device connected to said plasticating machine containing one or more valves to discharge the molten polymer; a movable non-rotatable separate and independent from said plasticating machine; hollow first transport and deposition device said first transport and deposition device including top and bottom walls and end walls, an entrance port in said top wall and an exit port in said bottom wall; said first transport and deposition device when said entrance port is aligned with one of said valves of said discharge device accepting the molten polymer from said plasticating machine, a ram located within said first transport, a forming device, a conveyor having a carrier of generally planar shape attached thereto; drive means for operating said conveyor and thereby moving said first transport and deposition device into alignment with said discharge device and then with said forming device, driving means moving said conveyor and carrier to a first position beneath the exit port of said first transport and deposition device where said ram discharges through said exit port a first layer of plasticized

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molten polymer which is deposited on the carrier, and said drive means thereafter moving said conveyor and carrier with said first layer of plasticized molten polymer into said forming device which produces an article of a desired shape from the combined carrier and the first layer of plasticized polymer. The closest prior art, Gallagher, Vismara, and Buckley fails to teach the addition of the robotic arms to the transport and deposition system.

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1-42 have been considered but are moot in view of the new ground(s) of rejection. The applicants have submitted new claims. The new rejection is based upon obvious double patenting of US patent No. 6,264,462 B1.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sandberg et al.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel S. Luk whose telephone number is (571) 272-1134. The examiner can normally be reached on Monday-Thursday 7 to 4 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EL

  
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